



Appeal Decision

Hearing held on 25 June 2024

Site visit made on 25 June 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Appeal Ref: APP/P0240/X/23/3315388

The Laurels, Langford Road, Biggleswade, Central Bedfordshire SG18 9JU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Michael Lee against the decision of Central Bedfordshire Council.
 - The application Ref CB/22/03098/LDCE, dated 29 July 2022, was refused by notice dated 17 November 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is: Erection of a dwellinghouse.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Preliminary Matters

2. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations.
3. Section 191(2) of the same Act states that for the purposes of this Act operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the operations described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

5. Section 171B of the 1990 Act sets out time limits within which enforcement action may be taken. At the time this LDC application was made, section 171B provided that:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

6. As the application has been made under section 191(1)(b), what is before me in this appeal are the building operations which have been carried out on the land, to which the time limit in section 171B(1) applies. In this case, the boundary of the land is tightly drawn around the building on it. This is shown on the red line site plan submitted with the application.
7. In a lawful development certificate appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable and their evidence is sufficiently precise and unambiguous, it should be accepted.
8. Planning history information provided in this case indicates that the appeal site, now known as "The Laurels", was previously known as "Little Acre".

Main Issue

9. The main issue is whether the Council's decision to refuse the application was well-founded.

Background

10. The history for the appeal site includes a planning application for the erection of a dayroom, Ref MB/05/01192/FULL. This was granted on appeal on 11 September 2006, Ref APP/J0215/A/05/1192910. The appellant states that the 2006 permission was not implemented.
11. Condition 5 of the 2006 permission stated:
- "The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential occupation of the 2 caravans at Little Acre, Langford Road, Biggleswade, and at no time shall the building be used as separate residential accommodation."*
12. This 2006 permission was subsequently amended, twice, in 2009, by way of non-material amendment applications. Both of these were granted on 7 December 2009, Refs CB/09/06510/NMA and CB/09/06679/NMA.

13. The appellant has provided a detailed written description of differences between the appeal building and what was approved by the 2006 permission. This description includes differences in height, width, depth, layout and fenestration. As I saw at my site visit, some of the differences are readily apparent from the road. At the Hearing, the Council confirmed that it does not dispute the appellant's description of differences.
14. Subsequent planning applications were made for a new site access in 2014, Ref CB/14/01732/FULL, and for variation of a condition on an earlier permission for the use of the land for the siting of caravans, in 2017, Ref CB/17/05881/VOC.

Reasons

15. According to the application form, the building which is the subject of this appeal was substantially completed on 1 July 2011. A statutory declaration has been provided to support this, stating that it was completed and ready for occupation in 2011.
16. In its statement, the Council says:

"Google Street View shows the building was constructed on or before September 2014 and appears to have been constructed to the existing height. The front rooflights can be seen together with the dormers in the Google Earth image dated 2016."
17. Whilst no September 2014 image has been provided, at the Hearing I asked the Council what that image shows. I heard from the Council that what is there now is the same as in 2014. This is compelling evidence which supports the appellant's case, given that what is there now is a substantially complete building. Moreover, it is consistent with the October 2016 aerial image provided by the appellant (Item GC5).
18. On the basis of the above, on the balance of probability, the building operations which are the subject of this appeal were substantially complete more than 4 years before the date of this LDC application. So the building operations are lawful for the purposes of section 191(2), as the time for enforcement action against the building operations has expired and there is no evidence that they are in contravention of the requirements of any enforcement notice.
19. My attention has been drawn to the application forms for the 2009 non-material amendment applications. These both clearly indicate that in November 2009 the dayroom granted in 2006 was "under construction". The subsequent 2014 and 2017 planning applications contain documents and/or drawings which refer to an "existing dayroom" and from the drawings provided, the building I saw on my site visit clearly occupies land where the dayroom was proposed.
20. The above planning history appears to contradict the appellant's case that the 2006 permission was not implemented. The Council's view is that the building was constructed as a dayroom, pursuant to the 2006 permission and its use subsequently changed to a dwellinghouse, in breach of condition 5 of that permission. To this end, the Council considers that section 171B(3) of the 1990 Act applies in this case, with a time limit of 10 years rather than 4.

21. But the use of the building is not what is before me in this appeal. Even if it was, section 171B(2) applies where a building is being used as a dwellinghouse in breach of a condition which serves to prevent that use. This has been confirmed by case law, (see *FSS v Arun DC & Brown* [2006] EWCA Civ 1172) and at the time this LDC application was made, the associated time limit was 4 years, not 10.
22. Moreover, as a matter of my planning judgement, taking into account the aforementioned description of differences, the appeal building is materially different to that which was granted planning permission in 2006. It is also materially different to that which was the outcome of the 2009 amendments. On the balance of probability, this indicates that what has been constructed is a different building, albeit occupying the same land.
23. A finding that the building operations are lawful does not necessarily mean that the use carried out within that building is lawful. In this regard, it is open to the appellant to make an application for an LDC (together with sufficiently precise and unambiguous evidence) to the Council, to ascertain whether the existing use of the building is lawful, under section 191(1)(a) of the 1990 Act.
24. As has been established in case law, (see *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15), if the appeal building has been used as a dwellinghouse from the outset, as has been indicated by the appellant, then the relevant time limit in respect of the use is that set out in section 171B(3), ie 10 years.
25. At the Hearing, I asked the appellant what I should make of the contradictory information from the 2009, 2014 and 2017 applications. I heard that the agent at that time was wrong and that they were not tasked with considering what was lawful, having probably just looked at the planning history to write what they did in those applications. On the balance of probability, I am satisfied this is a plausible explanation, particularly given a dayroom and dwellinghouse may appear similar in some circumstances, such as those in the case before me.
26. But even if the appeal building was constructed as a dayroom, pursuant to the 2006 permission, and its use then changed to a dwellinghouse, this would have no effect on the lawfulness of the building operations involved.
27. The LDC application before me does not seek certification for the lawfulness of any failure to comply with condition 5 of the 2009 permission. So in this regard, section 193(5) of the 1990 Act is relevant. If the 2006 permission was implemented, my decision does not mean that Condition 5 does not need to be complied with.
28. As is set out in Planning Practice Guidance (PPG), precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date. So I have carefully considered the choice of words used by the appellant in their description for this LDC application.
29. In light of my comments above about the use of the building and notwithstanding what I saw on my site visit, I am not satisfied that using the word "dwellinghouse" is appropriate in the description for this LDC.
30. To my mind, using the word "dwellinghouse" may imply lawfulness of the use and so may be too easily misinterpreted in this regard, notwithstanding that the LDC application has been made under section 191(1)(b) rather than

191(1)(a). As such, drawing on the power available to me under section 191(4), in the description I shall substitute the word “dwellinghouse” for “building”.

31. I have taken into account the appellant’s objection to my rewording of the description, raised at the Hearing, where I was referred to appeal decision, Ref APP/P0240/X/09/2101325, dated 7 October 2009 (Item GC13). But that decision pre-dates the content of the relevant PPG noted above and so I have amended the description so that there can be no misunderstanding about the use of the building as a consequence of my decision.
32. Taking all of the above into account, on the balance of probability, the appeal building was substantially complete more than 4 years before the date of this LDC application.

Conclusion

33. For the reasons given above, I conclude, on the evidence now available, that the “erection of a building”, was lawful on 29 July 2022. The Council’s refusal to grant a certificate of lawful use or development was not well-founded and so the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Lee
Stephen Connell

Appellant
Director at GC Planning Partnership Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Eilis Edmonds
David Hale

Senior Planning Officer
Gypsy and Traveller Manager

PHOTOGRAPHS

2 photographs of drawing No. 144450-01 dated 6/11



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 July 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the building within the red line on the attached plan was substantially complete 4 years before the date of this LDC application.

Signed:

L Perkins

INSPECTOR

Date: 9 July 2024

Reference: APP/P0240/X/23/3315388

First Schedule

Erection of a building

Second Schedule

Land at The Laurels, Langford Road, Biggleswade, Central Bedfordshire SG18 9JU

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 9 July 2024

by **L Perkins BSc (Hons) DipTP MRTPI**

**Land at: The Laurels, Langford Road, Biggleswade, Central Bedfordshire
SG18 9JU**

Reference: APP/P0240/X/23/3315388

Scale: Not to scale

